

Exhibit 35

JEFFREY D. HO, M.D.

March 3, 2010

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CRUZ

DAVID BUTLER, as Conservator of)
the Person and Estate of Steven)
Alan Butler,)
)
 Plaintiffs,)
)
)
 vs.) CV 161436
)
)
TASER INTERNATIONAL, INC.,)
PROFORCE MARKETING, INC., and)
DOES 1 through 20, inclusive,)
)
 Defendants.)
)
)

DEPOSITION OF JEFFREY D. HO, M.D.

Wednesday, March 3, 2010

5711 West Century Boulevard, 2nd Floor
Los Angeles, California

8:16 a.m. - 11:46 a.m.

RON FERNICOLA & ASSOCIATES
CERTIFIED SHORTHAND REPORTERS
REPORTED BY: SHARON CAHN, CSR NO. 6210
27720 Avenue Scott, Suite 140
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FILE NO. 10181

RON FERNICOLA & ASSOCIATES

JEFFREY D. HO, M.D.

March 3, 2010

2

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2 IN AND FOR THE COUNTY OF SANTA CRUZ

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6 DAVID BUTLER, as Conservator of)
the Person and Estate of Steven)
7 Alan Butler,)
Plaintiffs,)
9 vs.) CV 161436
10 TASER INTERNATIONAL, INC.,)
PROFORCE MARKETING, INC., and)
11 DOES 1 through 20, inclusive,)
Defendants.)
13 _____)

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17 Deposition of JEFFREY D. HO, M.D., taken before
18 Sharon Cahn, CSR No. 6210, a Certified Shorthand Reporter
19 for the State of California, with principal office in the
20 County of Orange, commencing at 8:16 a.m., Wednesday,
21 March 3, 2010, in the conference room at the Hilton Hotel
22 located at 5711 West Century Boulevard, San Lorenzo
23 Conference Room C, 2nd Floor, Los Angeles, California.

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JEFFREY D. HO, M.D.

March 3, 2010

Page 62

09:52 1 go through that. And if there's anything left at the end,
09:52 2 we'll -- we'll try to capture that.

09:52 3 A. Okay. What page are you on?

09:52 4 Q. Well, I'd like to start with Paragraph 8.

09:52 5 A. Paragraph 8?

09:52 6 Q. Yes. It was on Page 2.

09:52 7 A. Okay.

09:52 8 Q. "I understand that the Taser X26 ECD
09:52 9 involved in this matter was distributed or sold in July
09:52 10 2006." That was also the time that the officer received
09:52 11 his updated training with Version 13?

09:52 12 A. I'm aware of that.

09:53 13 Q. "As of that time, no peer-reviewed published
09:53 14 scientific or medical literature concluded that the
09:53 15 direct-delivered electrical charge of Taser ECDs cause
09:53 16 ventricular fibrillation or life-threatening cardiac
09:53 17 dysrhythmia in humans."

09:53 18 Now, at that time, there was a letter
09:53 19 published in the New England Journal of Medicine that
09:53 20 appeared to link a ventricular fibrillation in a
09:53 21 14-year-old boy to a taser application; is that correct?

09:53 22 A. I'm aware of that, yes.

09:53 23 MR. BURTON: Okay. And Let me just mark the
09:53 24 letter -- I've got it here somewhere -- Exhibit 3.

09:54 25 (Plaintiffs' Exhibit 3 was

JEFFREY D. HO, M.D.

March 3, 2010

Page 63

09:54 1 marked for identification by
09:54 2 the Certified Shorthand Reporter.)
09:54 3 BY MR. BURTON:
09:54 4 Q. Now, were you a consultant for Taser
09:54 5 International when this letter was published?
09:54 6 A. I would say at this point, yes.
09:54 7 Q. Were you a member of the Scientific and
09:54 8 Medical Advisory Board?
09:54 9 A. No.
09:54 10 Q. Have you ever been a member of the
09:54 11 Scientific and Medical Advisory Board?
09:54 12 A. No.
09:54 13 Q. But do -- do you interact with it?
09:54 14 A. I do.
09:54 15 Q. Is there a reason why you're not on the
09:54 16 Board?
09:54 17 A. Simply because I think it represents a
09:54 18 conflict of interest that I don't want to enter into.
09:54 19 Q. Now, when this came out, were you asked to
09:54 20 investigate it --
09:54 21 A. I was asked --
09:54 22 Q. -- the case?
09:54 23 A. Yes, I was.
09:54 24 Q. Was this the first you had learned about
09:54 25 that -- this incident involving this young man, was when

JEFFREY D. HO, M.D.

March 3, 2010

64

09:55 1 it was published in the New England Journal of Medicine?

09:55 2 A. I don't believe so. I believe I knew about
09:55 3 it before this.

09:55 4 Q. And how -- how did you know about it?

09:55 5 A. I believe that -- now this is going back
09:55 6 five-plus years, so my memory of the dates may not be 100

09:55 7 percent accurate. But my recollection was that the

09:55 8 incident that we're talking about occurred, and I was

09:55 9 asked to go to speak with the authorities in Chicago where

09:55 10 this case happened and see if they would talk to me about

09:55 11 the case, provide information, allow me to see some of the

09:55 12 records.

09:55 13 Q. Well, this incident occurred, I think, on --

09:55 14 I have the date right here -- February 7th, 2005.

09:55 15 A. Okay.

09:55 16 Q. The letter was published September 1st,

09:55 17 2005 --

09:55 18 A. Okay.

09:56 19 Q. -- according to the documents I have.

09:56 20 So is it your recollection that you found

09:56 21 out about this incident involving this young man --

09:56 22 obviously, after it happened, which would have been

09:56 23 February 7, 2005 -- but before you learned there was going

09:56 24 to be a publication of this case in the New England

09:56 25 Journal of Medicine?

JEFFREY D. HO, M.D.

March 3, 2010

70

10:02 1 Dr. Kim and Dr. Franklin were. This had not, to my
10:02 2 knowledge, come out or was in press. So I would have had
10:02 3 no reason to talk to them at that point.

10:02 4 Q. Well, were the documents that you looked at,
10:02 5 did they include the ER docs?

10:02 6 A. I don't believe so, no.

10:02 7 Q. Well, what documents did you review?

10:02 8 A. I believe there was an -- well, again, this

10:02 9 is five years ago. I believe there was an EMS Run Sheet
10:02 10 that we were allowed to look at. And I'm sure -- I mean,
10:02 11 there must have been other documents, because I'm sure it
10:02 12 wasn't just a single piece of paper we were allowed access
10:03 13 to. But, again, I remember it being -- they were not very
10:03 14 forthcoming in providing us with a lot of information to
10:03 15 just look over.

10:03 16 Q. Was a summary or a report prepared at that
10:03 17 time by you and/or Dr. Kroll about what you learned about
10:03 18 this incident?

10:03 19 A. Collectively, no. I don't know what
10:03 20 Dr. Kroll did. I did not put down a summary. I know I
10:03 21 was asked to, I think by phone call at some point, just
10:03 22 talk about what my impressions were at that time.

10:03 23 Q. A phone call with who?

10:03 24 A. Again, five years ago, I couldn't tell you.
10:03 25 I'm assuming it was probably Mark Johnson, again, just

JEFFREY D. HO, M.D.

March 3, 2010

83

10:19 1 rhythm, then.

10:19 2 Q. It's his first EKG, documented EKG rhythm;

10:20 3 correct?

10:20 4 A. It's the first one that is recorded there.

10:20 5 But his first pulse was 100, which is not consistent with

10:20 6 ventricular fibrillation.

10:20 7 Q. Well, where does this 23 minutes from the

10:20 8 taser application to the ventricular fibrillation

10:20 9 indicated in the report, where does that come from?

10:20 10 A. Again, I couldn't tell you where it comes

10:20 11 from. I don't recognize this report. And as I'm sitting

10:20 12 here today, as I told you, this was a very unstructured

10:20 13 meeting with Chicago City officials in some capacity. For

10:20 14 all I know, we asked questions and they gave us times off

10:20 15 whatever documents they had. They may not have put this

10:20 16 document in front of us. I don't know.

10:20 17 We were -- we walked out of that room with

10:20 18 what we felt was the best information given to us that we

10:20 19 could make -- make an assessment of the case on.

10:21 20 Q. It says, "Paramedics on the scene --

10:21 21 Paramedics on the scene" -- this is back to Exhibit 5,

10:21 22 Dr. Kroll's letter -- "reported the subject was awake and

10:21 23 responsive and had normal pulse and lung sounds

10:21 24 immediately after the taser application."

10:21 25 Did you see something that said that the

JEFFREY D. HO, M.D.

March 3, 2010

Page 86

10:24 1 ambulance and found him to be in ventricular fibrillation.

10:24 2 And I think that's still true today.

10:24 3 Q. Okay. And that was his initial rhythm that
10:24 4 was on the EKG?

10:24 5 A. That was his initial rhythm on a monitor

10:24 6 that was applied at least two minutes after -- you know,

10:24 7 at least two minutes after the crew was on scene.

10:24 8 Q. Now, do you think that this young man had a
10:24 9 cardiac arrest because of excited delirium?

10:24 10 A. I don't know enough about the -- I don't
10:24 11 know enough about the events ahead of time to say on that,
10:24 12 and I don't know all of his medical history and things
10:25 13 like that. So it would be very difficult for me to say
10:25 14 whether or not this was excited delirium.

10:25 15 I do think that, you know, it's obvious that
10:25 16 he had a cardiac arrest. It doesn't sound like this was
10:25 17 electrically induced. It sounds like it could be from any
10:25 18 number of different causes. I just need to know more
10:25 19 about his history.

10:25 20 Q. Well, it says here in the next -- the bottom
10:25 21 paragraph, "The rhythm strips shown in Dr. Kim and
10:25 22 Franklin's letter does, indeed, show an apparent
10:25 23 successful defibrillation. What should have been made
10:25 24 clear, however, was the fact that this strip was recorded
10:25 25 approximately 23 minutes after taser application and

JEFFREY D. HO, M.D.

March 3, 2010

87

10:25 1 9 minutes into the resuscitative attempt after 3 previous
10:25 2 shocks. The initial medical problem cannot be diagnosed
10:25 3 from the data provided. In fact, the EMS record notes an
10:25 4 idioventricular pulseless rhythm, which may have been the
10:25 5 cause of the initial collapse."

10:25 6 In fact, the EMS records show that the
10:25 7 initial rhythm was ventricular fibrillation, not pulseless
10:26 8 idioventricular rhythm; correct?

10:26 9 A. I would agree, it doesn't say "pulseless
10:26 10 idioventricular rhythm". But you keep saying the initial
10:26 11 rhythm. And I'll keep saying that ventricular
10:26 12 fibrillation was not the initial rhythm when they record a
10:26 13 pulse of 100. That's not possible.

10:26 14 Q. "Of further interest" -- and I'm going onto
10:26 15 the next page -- "it is not uncommon for first responders
10:26 16 to apply defibrillation shocks in attempts to resuscitate
10:26 17 a subject experiencing non-fibrillation type arrhythmias."

10:26 18 Is that true?

10:26 19 A. That is known to occur.

10:26 20 Q. But it's not common, is it?

10:26 21 A. I would say it's not rare. I mean, does it
10:26 22 happen every day? Maybe not. But one of the things that
10:26 23 they are taught is if they see a rhythm that they are
10:27 24 unsure of, such as asystole that could represent fine
10:27 25 ventricular fibrillation, they are instructed to go ahead

JEFFREY D. HO, M.D.

March 3, 2010

Page 92

10:44 1 that on mine. Oh, I'm sorry, it does, right here on the
10:44 2 left. It's very hard to see.

10:44 3 Q. Right. It's very hard to see. This is how
10:44 4 I got it from -- from -- from Taser.

10:44 5 So it appears that what -- and this wasn't a
10:44 6 360 joule shock.

10:44 7 It appears that what the authors did is --
10:44 8 is somebody put the strip for the Shock 1 instead of the
10:44 9 strip for Shock 4 in the report.

10:44 10 A. Okay.

10:44 11 Q. Does that seem to make sense?

10:44 12 A. Sure.

10:44 13 Q. Okay. Well, does that make -- other than,
10:44 14 obviously, being an error -- and I know we pointed out a
10:44 15 typo in one of your articles once, for example -- other
10:45 16 than being an error, is this error any way material to the
10:45 17 case report or the conclusions that -- that you can think
10:45 18 of?

10:45 19 A. You know, it actually is somewhat material
10:45 20 in the standpoint of this required -- at least from what's
10:45 21 provided here to me -- at least four shocks of
10:45 22 defibrillation. Correct?

10:45 23 Q. Right. But they say that on the front -- on
10:45 24 the front page.

10:45 25 A. Right. And, again, it kind of speaks to the

JEFFREY D. HO, M.D.

March 3, 2010

93

10:45 1 same thing that's occurring in this case with Mr. Butler.

10:45 2 If you believe that this is a electrically-induced
10:45 3 phenomena, then the appropriate thing would be quick
10:45 4 defibrillation, which it sounds like this was immediately
10:45 5 recognized, and the appropriate response should be
10:45 6 immediate successful defibrillation back into normal sinus
10:45 7 rhythm, which is not what occurred here. Which leads me

10:46 8 to believe that there is likely something else going on.

10:46 9 Q. Okay. But -- but I'm asking if the report
10:46 10 is misleading -- because it says in the report on the
10:46 11 prior page, "After four shocks and the administration of
10:46 12 epinephrine, atropine and lidocaine, a profusing rhythm
10:46 13 was restored". And it says "Figure 1B", which, actually,
10:46 14 was the first shock, not the fourth shock.

10:46 15 A. Okay. Well --

10:46 16 Q. But -- but the fact that they mixed up those
10:46 17 two strips -- or somebody did -- doesn't change anything
10:46 18 in this paper, does it? Because the two strips show
10:46 19 essentially the same thing?

10:46 20 MR. MALEY: I'm -- I'm -- I'm sorry, John. I
10:46 21 just -- I don't know what you're asking. So I've got to
10:46 22 object. If -- if the witness understands what you're
10:46 23 asking -- I just don't know what --

10:46 24 THE WITNESS: I think I know what you're asking,
10:46 25 but I guess I'm not -- in my mind, there's two issues